

In the High Court of Judicature at Madras

Dated:06.02.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.294 OF 1997

Danalakshmi

..Appellant/Plaintiff

vs

Ramalingam

..Respondent/Defendant

This second appeal is filed against the judgment and decree dated 28.6.1996 made in A.S.No.66 of 1996 on the file of the Court of the first Additional Sub Judge, Pondicherry reversing the Judgment and decree dated 24.12.1992 made in O.S.No.782 of 1982 on the file of the Court of the Second Additional District Munsif at Pondicherry and for setting aside the same and restore the Judgment and decree passed in in O.S.No.782 of 1982 on the file of the Court of the Second Additional District Munsif at Pondicherry.

For Appellant : Mr.R.Natarajan

For Respondent : Mr.V.K.Kumarasamy

JUDGMENT

This appeal has been preferred against the decree and Judgment in A.S.No.66 of 1996 on the file of the Court of first additional Sub Judge, Pondicherry. The plaintiff who has got a decree in her favour before the trial Court could succeed only in respect of 2/3rd share before the first appellate Court, is the appellant herein.

2. The averments in the plaint relevant for the purpose of deciding this appeal are as follows:

The plaint schedule property was originally belonged to one Deivaseekamani Gounder. After his death, the property devolved on his two sons viz., Gopalsamy and Manickam. Gopalsamy and Manickam executed a sale deed in favour of the plaintiff on 20.6.1979 for a valuable consideration of Rs 760/-. Thereafter, the plaintiff is in continuous possession of the suit property, cultivating the same. From the date of sale, the plaintiff is in uninterrupted possession of the plaint schedule property. The plaintiff is only paying the tax from the date of the sale. The property

is punja land which was ploughed by the plaintiff and raised Millet crops. The defendant, on 10.7.1982, who has no right over the property obstructed the plaintiff and for that she has lodged a police complaint and they advised the party to move the Civil Court for appropriate remedy. Hence the suit for declaration of plaintiff's right in suit property and also for consequential permanent injunction.

3. The defendant filed a written statement contending that the plaintiff claims her title in respect of the suit property under a sale deed executed by Gopalsamy and Manickam, two sons of Deivaseekamani Gounder which cannot be allowed under law. The suit property originally belonged to Deivaseekamani Gounder. He had his wife by name Rajambal. Deivaseekamani died issueless. Rajambal who was enjoying the property as a legal heir of Deivaseekamani, sold the same in favour of Lakshmi Ammal on 17.1.1873. Thereafter, Lakshmi Ammal continued possession of the property and she was also raising crops in the same. The defendant purchased the schedule item of the suit property from Lakshmi Ammal by way of registered sale deed dated 22.2. 1982. From the date of purchase, the defendant is enjoying the property as absolute owner. In the sale deed of the defendant only the Cad Number of the property was wrongly given, but the boundaries of the suit property and also the property purchased by the defendant tallies. The defendant is paying tax to the property and he is in peaceful possession and enjoyment of the suit property. The defendant filed a suit in O.S.No.541 of 1982 on the file of the Additional District Munsif Court and the said suit is pending. The defendant was granted an interim injunction in the said suit. The present suit has been filed by the plaintiff vexatiously. Only Millet crop has been raised in the property which is in the possession of the defendant. Gopalsamy and Manickam are not the children of Deivaseekamani. Hence the suit is liable to be dismissed.

4. On the above pleadings, the trial Court had framed as many as five issues for trial. On the side of the plaintiff, the plaintiff has examined two witnesses P.W.1 and P.W.2 on her side and exhibited Exs A1 to A10. The defendant has examined himself as D.W.1 besides examining another witness Poopala Gounder as D.W.2. On the side of the defendant Exs B1 to B4 were marked. A Commissioner was appointed in this case who has filed EX C1 report and Ex C2 plan. The Advocate Commissioner was also examined as C.W.1 as a Court witness.

5. After going through the oral and documentary evidence available on record, the learned trial Judge has decreed the suit. Aggrieved by the findings of the learned trial Judge, the defendant has preferred A.S.No.71 of 1989 on the file of III Additional District Judge, Pondicherry. The first appellate Court in its Judgment dated 21.1.1992 in A.S.No.71 of 1989 (Preferred against the decree and judgment in O.S.No.782 of 1982) has remanded the case for appointing an Advocate Commissioner. After appointing the Commissioner, the trial Court has passed a Judgment in O.S.No.782 of 1982, thereby decreeing the suit in favour of the plaintiff.

Again an appeal was preferred by the defendant and the first appellate Judge has allowed the appeal and modified the Judgment of the trial Court to the effect that the plaintiff is entitled for declaration of her title in respect of 2/3rd share in the property and the predecessors-in-title of the defendant viz., Rajam Ammal was entitled to 1/3rd share and directed the parties to file a suit for partition for a division and for allotment of their respective shares and the prayer for injunction was dismissed. Aggrieved by the findings of the first appellate Court, this second appeal has been preferred by the plaintiff.

6. The substantial question of law involved in this appeal is

" Whether the lower appellate Court is justified in reversing the judgment and decree of the trial Court which decided the suit pursuant to and based on the directions specified in the remand judgment and decree of A.S.No.71 of 1989 dated 21.1.1992 and whether the lower appellate Court by doing so has contravened sub section 2 of Section 105 and Section 107 of CPC and violated the mandatory provisions under Order 41 Rule 31 and Rule 33 of CPC?

7. The Point:

It is the admitted case of the parties that one Deivaseekamani Gounder was the original owner of the property and his wife is Rajam Ammal and that Deivaseekamani Gounder died intestate on 9.1.1973. According to the defendant, the wife of Deivaseekamani viz., Rajam Ammal had executed Ex B4 sale deed on 17.1.1973 in favour of one Lakshmi Ammal who in turn had executed Ex B2 sale deed in favour of the defendant on 22.2.1982. The case of the defendant is that Deivaseekamani Gounder and Rajammal had no issues.

8. Per contra, it is the case of the plaintiff that he had purchased the plaint schedule property from one Gopalsamy and Manickam under Ex A1 sale deed dated 20.6.1979 and that his vendors are the sons of Deivaseekamani Gounder. The plaintiff's husband Gopalsamy has examined as PW.1 on the side of the plaintiff. He would depose that Deivaseekamani had three sons viz., Gopalsamy, Manickam and Govindasamy and after the death of his father in the year 1973, he and his brother Manickasamy were in possession and enjoyment of the suit property and that he and his brother had executed Ex A1 sale deed in favour of the plaintiff who is none other than his wife.

9. P.W.2 also deposed to the fact that Deivaseekamani had three sons by name Manickasamy, Govindarasu and Gopalsamy and out of them Govindarasu died some 13 years ago and that the suit property was in possession and enjoyment of Govindasamy. Both P.Ws 1 and 2 have stated that they are not aware of the second marriage of Deivaseekamani with one Rajam Ammal. Ex A3 is the birth extract relating to the registration of the birth of Govindarasu dated 30.6.1939 to Deivaseekamani Gounder. Ex A7 is the

registered settlement deed dated 3.9.1971 said to have been executed by Deivaseekamani Gounder in favour of his sons viz., Gopalasamy Gounder and Manickasamy Gounder. Even in Ex A7 both Gopalasamy Gounder and Manickasamy Gounder were described by Deivaseekamani Gounder as his sons. Further it is seen from Ex A2(Translation copy from french to English) that Deivaseekamani died on 9.1.1973 at Chiinnakalapet of Oulgaret Commune and this fact was intimated to the Registrar Oulgaret Commune by Gopalsamy, son of the deceased Deivaseekamani. The brother of Deivaseekamani was examined as D.W.2 who would depose that Rajammal was the wife of Deivaseekamani and Deivaseekamani died on 9.1.1973 but he would depose that his brother had no issues which is contrary to the recitals in Ex A7. The said Rajam Ammal had executed Ex B4 sale deed dated 17.1.1973 in favour of one Lakshmi Ammal in respect of 22 Kuzhi in Paimash No.1006/2.

10. Even though, the defendant who had purchased the same under Ex B2 sale deed dated 22.2.1982 from the vendee Lakshmi Ammal under Ex B4 sale deed, the plaintiff contended that the property purchased by the defendant under Ex B2 is not the suit survey number property, which was purchased by him under Ex A1. The property scheduled to the plaint is 40 cents or 21 Kuzhi in R.S.No.102/1 fh be 1088.2/2,1/2 pt 2/2/1 oh 11A. To identify the plaint schedule property which is the property scheduled to Ex A1 said to have been purchased by the plaintiff. So to identify whether the suit property and the property purchased under Ex B2 by the defendant are one and the same, the learned trial Judge has appointed a Commissioner who has filed Ex C1 report and plan Ex C2. It is seen from the Commissioner's Report Ex C1 that the property purchased by the defendant under Ex B2 has been acquired by the Government of Pondicherry for establishing Central University. The Commissioner has identified the plaint schedule property under Ex C2 plan as comprised in R.S.No.102/1. The Commissioner has further stated that the plaintiff is in possession of 0.13.62 hectares and the property under the possession of the plaintiff has also been identified by the Commissioner as A/1 in Ex C2 plan and Ex B2 property was also identified by the Commissioner comprised in a part of 19/2 as B/2 which has been acquired by the Government of Pondicherry for Central University. Under such circumstances, the contentions of the defendant that the property purchased by him under Ex B2 and the property purchased by the plaintiff under Ex A1 are one and the same cannot be sustainable.

11. When coming to the findings of the learned first appellate Court, the learned Judge has decreed the suit filed by the plaintiff in respect of the prayer for declaration, declaring that the plaintiff is entitled to 2/3rd share in the suit property and the remaining 1/3rd share in favour of Rajammal, the wife of Deivaseekamani Gounder. There is absolutely no evidence let in by the plaintiff to show that Deivaseekamani Gounder has not married Rajammal for the second time. On the other hand, the evidence of D.W.2 will go to show that Rajammal is the wife of Deivaseekamani Gounder. The defendant who has examined as D.W.1 would state that Rajammal is the wife of Deivaseekamani Gounder and that after

the death of Deivaseekamani Gounder, Rajammal was in possession and enjoyment of the property sold under Ex B1 by Lakshmi Ammal, the vendee under Ex B4 who is her predecessors-in-title in respect of the property sold under Ex B2. In support of his contention, the defendant has filed Ex B2(translation copy from French to English) to show thaht Rajammal had married Deivaseekamani on 11.9.1936 before the Registrar Oulgaret Commune, Pondicherry.

12. It is the admitted case that Deivaseekamani Gounder died intestate and that the suit property belongs to the said Deivaseekamani Gounder. Under such circumstances, the vendors of Ex A1 sale deed in favour of the plaintiff viz., Gopalasamy Gounder and Manickam Gounder are each entitled to 1/3rd share in the suit property as legal representatives of Deivaseekamani Gounder and likewise, as the wife of Deivaseekamani Gounder, Rajammal is entitled to the remaining 1/3rd share as observed by the first appellate Judge. The learned first appellate Judge has also directed the parties to file a suit for partition for division and for allotment of their respective shares in respect of the properties belonged to Deivaseekamani Gounder.

13. Under such circumstances, I do not find any illegality or infirmity in the Judgment of the first appellate Court in A.S.No.66 of 1996 which does not suffer from any illegality or infirmity to warrant interference from this Court. Point is answered accordingly.

14. In the result, the appeal is dismissed confirming the d ecree and Judgment in A.S.No.66 of 1996 on the file of the Court of First Additional Sub Judge, Pondicherry. Considering the close relationship of the parties, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The I Additional Sub Judge, Pondicherry
2. The II Additional District Munsif, Pondicherry.

1 cc To Mr.R.Natarajan, Advocate, SR.7336.

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JSK(CO)
RVL 21.02.2007